

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 862

THE UNITED STATES, PETITIONER

VS.

JOHN J. FELIN & CO., INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
CLAIMS

INDEX

Original Print

Record from Court of Claims	1	1
Petition	1	1
General traverse	7	4
Argument and submission	7	4
Special findings of fact	9	5
Conclusion of law	17	12
Opinion, Whitaker, J.	18	12
Order of court relative to judgment	21	14
Judgment	25	15
Clerk's certificate [omitted in printing]	29	15
Order allowing certiorari		16

C

1 In the Court of Claims of the United States

No. 45892

JOHN J. FELIN & CO., INC., A CORPORATION

v.

UNITED STATES OF AMERICA

Plaintiff's petition

Filed June 24, 1943

To the Honorable the Judges of the United States Court of Claims:

The petition of John J. Felin & Co., Inc. respectfully shows that:

I

Petitioner is, and at all times hereinafter mentioned was, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with packing plant and place of business at 4142 Germantown Avenue, Philadelphia, Pennsylvania.

Petitioner has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government.

2 II

On March 3, 1943, the following property owned by and in the possession of the petitioner at its place of business was taken under a requisition order by and for the use of the United States and was thereafter retained by and used for the purposes of the United States, and petitioner was thereby and thereafter deprived of all said property, its use and its value:

40,000 pounds cured regular hams, bone in, 14-18 pound range.

40,000 pounds cured pork bellies, square cut and seedless, 10-12 pound range.

15,000 pounds cured pork picnics, bone in, 10-14 pound range.

30,000 pounds salted pork fatbacks, cured, 8-12 pound range.

This taking of petitioner's property was under a requisition order (No. F. D. A. 100) dated March 1, 1943, signed by Roy F. Hendrickson, Director, Food Distribution Administration, United States Department of Agriculture, and issued by him, as delegate of the Secretary of Agriculture, by virtue of the order of the President of the United States dated December 5, 1942 (Exec. Order No. 9280, para. 8c, para. 9, Fed. Reg. Vol. 7, p. 10179), and

the authority of the President under the Act of October 16, 1941, as amended (Chap. 445, 55 Stat. 742).

III

Following the the taking of its property as aforesaid, petitioner was served with a "Notice of Requisition" dated March 23, 1943, signed by Ralph W. Olmstead, Deputy Director, Food Distribution Administration, United States Department of Agriculture, and directed to file a claim for the requisitioned property with Livestock and Meats Branch, Food Distribution Administration, United States Department of Agriculture, Washington, D. C.; and thereafter, on or about March 27, 1943, petitioner filed its claim for just and reasonable compensation. Under date of May 7, 1943, the aforesaid Roy F. Hendrickson, as Director, Food Distribution Administration, United States Department of Agriculture, issued and served upon petitioner a "Notice of Preliminary Determination" which stated certain amounts as "fair and just compensation" for the requisitioned hams, bellies, picnics, and fatbacks aggregating \$25,112.50.

To this Preliminary Determination petitioner filed with the Food Distribution Administration on or about May 15, 1943, its objections and asserted that payment in the amounts determined "would deprive the company of its property without just compensation in violation of the Fifth Amendment of the Constitution of the United States"; and, further, that fair and just compensation as required by the Fifth Amendment was not less than \$31,637.50. Notwithstanding petitioner's showing as made in its objections to the Preliminary Determination and in its original claim filed with the Food Distribution Administration, said Roy F. Hendrickson, under date of May 22, 1943, made the following order:

4

WAR FOOD ADMINISTRATION

FOOD DISTRIBUTION ADMINISTRATION

WASHINGTON, D. C.

Requisition No. FDA-100.

AWARD OF COMPENSATION FOR PROPERTY REQUISITIONED UNDER THE ACT OF OCTOBER 16, 1941, AS AMENDED

The Director of Food Distribution, pursuant to the Act of October 16, 1941, as amended, and the Executive orders and regu-

lations thereunder, hereby makes the following award of compensation with respect to the property described below which was requisitioned by the United States:

DESCRIPTION OF PROPERTY

40,000 pounds cured regular hams, bone in, 14-18 pound range.
40,000 pounds cured pork bellies, square cut and seedless, 10-12 pound range.
15,000 pounds cured pork picnics, bone in, 10-14 pound range.
30,000 pounds salted pork fatbacks, cured, 8-12 range.

AMOUNT OF COMPENSATION

Twenty-five thousand, one hundred and twelve, and 50/100 (\$25,112.50) dollars (aggregate amount).

PERSON ENTITLED TO COMPENSATION

John J. Felin & Co., Inc., 4142 Germantown Avenue, Philadelphia, Pennsylvania.

(S) ROY F. HENDRICKSON,
Director of Food Distribution.

WASHINGTON, D. C., May 22, 1943.

5

IV

Petitioner was and is unwilling to accept as fair and just compensation for the said requisitioned meat products the amount of \$25,112.50 and petitioner has failed to receive the fair and just compensation to which it is entitled under the Act of October 16, 1941, as amended, and under the Fifth Amendment to the Constitution of the United States.

V

On or about May 22, 1943, Food Distribution Administration issued its voucher to petitioner relating to the said requisitioned meat products in the amount of \$12,556.25, being payment of one-half of the award aforesaid as provided by the terms of the Act of October 16, 1941, as amended, in cases where the owner of property requisitioned is unwilling to accept the award as fair and just compensation and petitioner has received from the United States the amount of \$12,556.25 and has credited the amount against its claim for fair and just compensation.

VI

The fair and reasonable value of the property requisitioned and taken by the United States as aforesaid and of which petitioner was deprived on March 8, 1943, was \$31,637.50. Credit in the amount of \$12,556.25 for the payment received by petitioner as aforesaid, leaves the sum of \$19,081.25, with interest, as that to which petitioner is justly entitled, after all just credits and offsets, as the fair and just compensation.

6

VII

No other action than that herein described has been taken on petitioner's claim in any government department or in Congress; no person other than petitioner is the owner of the claim herein asserted or has any interest therein; and no assignment or transfer of this claim or any part thereof or interest therein has been made.

Wherefore, petitioner prays judgment against the United States of America for the sum of Nineteen Thousand Eighty-one Dollars and Twenty-five cents (\$19,081.25), together with interest and its costs herein expended.

CLARK & LA ROE,
Attorneys for Petitioner,
Investment Building, Washington 5, D. C.

JUNE 23, 1943.

[Duly sworn to by George A. Casey; jurat omitted in printing.]

7

General traverse

Filed August 3, 1943

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

FRANCIS M. SHEA,
Assistant Attorney General.

M. K. F.

E. E. E.

Argument and submission of case

On June 4, 1946, the case was argued and submitted on merits by Mr. Arthur L. Winn, Jr., for plaintiff, and by Miss Mary K. Fagan for defendant.

9 *Special findings of fact, conclusion of law, and opinion of
the court by Whitaker, J.*

Filed October 7, 1948

Mr. Arthur L. Winn, Jr. for the plaintiff. Messrs. Wilbur LaRoe, Jr., and Frederick E. Brown were on the brief.

Miss Mary K. Fagan, with whom was Mr. Assistant Attorney General John F. Sonnett, for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following

Special findings of fact

1. The plaintiff, a corporation having its principal office in Philadelphia, Pennsylvania, is and for many years has been engaged in the business of packing pork products. It buys hogs in the Chicago, St. Louis and Indianapolis markets and transports them to Philadelphia where the hogs are slaughtered and converted into various pork cuts and products. The plaintiff is a wholesaler and sells and distributes its products through trucks maintained by it to retail dealers in the metropolitan area of Philadelphia.

2. On December 5, 1942, the President of the United States issued Executive Order No. 9280 by which he authorized and directed the Secretary of Agriculture to assume full responsibility for and control over the Nation's food program in order to assure an adequate supply and efficient distribution of food to meet war and essential civilian needs. Among other things, the Secretary of Agriculture was authorized by this Order to assign food priorities and to make allocations of food for human and animal consumption to Government agencies and for private account and to purchase and procure food for such Government agencies.

3. During February and March 1943, the Food Distribution Administration, an agency of the Department of Agriculture, was in charge of procuring meat for various Departments and Government agencies, which required it for shipment under the Lend-Lease program authorized by the Act of March 11, 1941. It had the authority to issue priority orders which had the effect of requiring packers to fill its orders prior to the filling of other orders and it procured meat by issuing to each packer operating under Federal inspection a priority order calling for delivery of a proportionate part of the total quantity needed at the time. Each packer's quota was based on the ratio of meat produced in

his plant to the total production in all Federally inspected packing plants.

4. On February 2, 1943, the Food Distribution Administration sent plaintiff a priority order requesting it to deliver 225,000 pounds of lard and pork products, which are hereinafter described, to the Federal Surplus Commodities Corporation, an agency of the United States Government, for delivery under the Lend-Lease program. The order, known as a purchase order, stated that plaintiff would be paid the ceiling prices applicable under provisions of the Office of Price Administration regulations, and that plaintiff was required to fill the order in preference to any other contract or purchase order of lower or no priority rating.

5. Prior to the receipt of the purchase order, plaintiff had supplied pork products to several Government agencies. By February 2, 1943, however, plaintiff had decided it could no longer afford to sell at the prices offered by Government agencies. Accordingly, plaintiff refused to make delivery and on March 1, 1943, the Director of the Food Distribution Administration, acting under the authority of Executive Order No. 9280 and specific authorization of the Secretary of Agriculture, made a determination pursuant to the Act of October 16, 1941 (55 Stat. 742), that it was necessary to requisition the property from plaintiff. The requisition was issued on March 1, 1943, and on March 3, 1943 the United States

took title and possession of the following described
11 property which was owned by plaintiff and was then located at its packing house in Philadelphia, Pennsylvania:

40,000 pounds Cured Regular Hams, 14 to 18 lb. range.

40,000 pounds Cured Clear Bellies, 10 to 14 lb. range.

15,000 pounds Cured Picnics, 6 to 10 lb. range.

30,000 pounds Salted Fatbacks, 8 to 12 lb. range.

100,000 pounds Refined Pure Lard, 1 lb. prints (30 lbs. to carton).

6. On March 24, 1943, plaintiff was directed to file proof of claim with the Food Distribution Administration, Washington, D. C. On the same day, plaintiff prepared and promptly thereafter filed its claim, stating that fair and just compensation for the property requisitioned was the sum of \$55,525.00, which included \$16,250 for the lard and \$39,275 for the pork cuts. Plaintiff claimed that \$39,275 was the cost of replacing the pork cuts and that the figure was arrived at on the basis of a live hog cost of \$15.90 per cwt., at Chicago, Illinois, on the date of the requisition. Plaintiff also claimed that the ceiling prices provided for in applicable regulations of the Office of Price Administration (the prices offered by defendant) were less than fair and just

compensation for the property because such ceiling prices were based upon a live hog cost at Chicago of \$13.15 per cwt.

7. On May 7, 1943, the Director of the Food Distribution Administration made a preliminary determination that fair and just compensation for the property requisitioned from plaintiff was the sum of \$40,656.28, including \$15,543.78 for the lard and \$25,112.50 for the pork cuts. The amount determined was computed at the ceiling prices authorized by Revised Maximum Price Regulation No. 148 of the Office of Price Administration for sale at wholesale of such products in carload quantities at Philadelphia, Pennsylvania.

8. On May 8, 1943, plaintiff received notice of the preliminary determination and on May 15, 1943, wrote the Office of Food Distribution accepting the award for the lard but objecting to the value determined for the pork cuts on the ground that it was less than the cost of producing or replacing the property.

9. On May 22, 1943, the Director of the Food Distribution Administration made a final award for the pork cuts, separately from the lard, which was in the sum of \$25,112.50. This was in the same amount as the preliminary award and in the letter by which plaintiff was advised of this action it was stated that the preliminary award could not be increased because the Government could not pay more than the ceiling prices fixed by regulations of the Office of Price Administration.

10. Since plaintiff refused to accept the amount awarded as the value of the pork cuts, plaintiff was paid fifty percent thereof or \$12,556.25. Plaintiff accepted and was paid the full amount awarded as compensation for the lard. References in succeeding findings to the property requisitioned from plaintiff do not include the lard taken by defendant.

11. At the time its property was requisitioned, the price at which plaintiff could sell wholesale pork cuts was fixed by regulations issued by the Office of Price Administration, but there were no price regulations governing the sale of live hogs until September 11, 1943, when Maximum Price Regulation No. 469, establishing ceiling prices for live hogs, was issued. The principal item in the cost of producing products sold by plaintiff was the amount it had to pay from time to time for live hogs.

12. Price ceilings on the sale of dressed hogs and wholesale pork cuts were first established on March 9, 1942. On that date the Administrator of the Office of Price Administration, pursuant to the Emergency Price Control Act of 1942 and Executive Orders issued thereunder, issued Temporary Maximum Price Regulation No. 8 which became effective March 23, 1942. This

regulation was superseded on May 20, 1942, when Maximum Price Regulation No. 148 was issued. On October 24, 1942, the Price Administrator issued Revised Maximum Price Regulation No. 148 covering dressed hogs and wholesale pork cuts which became effective November 2, 1942, and Amendment No. 1 thereof went into effect January 19, 1943. On March 3, 1943, the date plaintiff's property was requisitioned, all sales of pork cuts and pork products at wholesale were governed by the provisions of Revised Maximum Price Regulation No. 148 and Amendment 1 thereto.

Each of the regulations referred to above established as the maximum prices for dressed hogs and wholesale pork cuts, the prices prevailing with respect thereto during the period March 3, 1942, to March 7, 1942, inclusive.

13. Chicago, Illinois, is one of the largest hog markets in the country and is the place where most transactions between large buyers of meat products occur. Chicago market quotations are the basic quotations in the packing industry and are generally used for arriving at prices on hogs and pork products in other market centers. During the period from March 3 to March 7, 1942, which was the base period of the price regulations referred to in the preceding finding, the average price of live hogs at Chicago was \$13.15 per cwt. However, the price of live hogs began to rise soon after the issuance of Temporary Maximum Price Regulation No. 8 and did not decline to the level prevailing during the base period mentioned at any time thereafter in 1942 or 1943. In April 1942, the first full month in which price ceilings were in effect on wholesale pork cuts, the Chicago average price rose to \$14.03. The price trend continued upward, and although there was a price decline during the heavy marketings in November and December 1942, the price started rising again in the latter part of December 1942 and reached an average of \$15.59 per cwt. during March 1943. For the week ending March 6, 1943, the Chicago average live hog price was \$15.60 per cwt., the highest price level attained since October 1920.

14. During the months of February and March 1943 the wholesale prices for products derived from live hogs were, as shown by the published reports of the Department of Agriculture, less than the market prices of live hogs. On April 10, 1943, the War Food Administrator, to whom the President had transferred the powers and functions theretofore granted to the Secretary of Agriculture under Executive Order No. 9280, issued an official press release in which reference was made to the continued "squeeze" between the price of live animals and the wholesale prices of products. The release read in part as follows:

“(1) Current prices for livestock are above the levels reflecting a proper relationship to the existing wholesale meat ceilings. The Administration does not contemplate any change in the level of either wholesale or retail meat ceilings.

“The meat rationing program, together with the vigorous enforcement measures which are designed to keep meat supplies moving through legitimate trade channels, will have the effect of bringing about a better balance between available supplies and civilian, military, and other requirements. This is expected to result in lower prices for all classes of livestock as these programs become fully effective.

“However, if these measures do not result in a downward adjustment in hog prices in a reasonable time, it will be necessary to adopt ceiling prices on live hogs. In view of the exceptionally acute situation resulting from present relatively high hog prices, procedures for placing ceiling prices on hogs are now being worked out for use if and when necessary. Recent hog prices have been \$1.00 to \$1.50 per cwt. above levels reflected by current wholesale pork ceilings.”

15. Average live hog prices at Chicago declined somewhat in the months of May, June, and July, 1943, but they began to increase again during the latter part of August of that year and Maximum Price Regulation No. 469 was issued on September 11, 1943. It established ceiling prices on the sale of live hogs effective October 4, 1943. In the statement of considerations involved in the issuance of this regulation the Price Administrator, after referring to the several regulations fixing ceiling prices on wholesale pork cuts and the rise in hog prices since March 1942, stated in part as follows:

“However, the hog price continued to rise, the average reaching \$14.99 in August, with a top of \$15.30. It became clear that this increase was causing some packers to sell at a loss under their wholesale pork ceilings and that, if prices continued to rise, or even remained at August levels, many pork slaughterers would be forced sharply to curtail their kill or to discontinue it entirely. With the increased runs of the late fall, the hog price declined; but in late December it began again to rise, reaching an average of \$15.59 per hundredweight for the month of March 1943, with some hogs selling in excess of \$16 during that month. During the months of May, June, and July, 1943, the hog price was low enough to permit slaughterers to make a profit; but in early August another price rise threatened to efface slaughterers' margins. Once more the price reached \$15 per hundredweight.

15 “Although it is true that the seasonal nature of livestock marketing has made periods of loss a commonplace in the

packing industry, it is also true that slaughterers generally are able to balance seasonal losses with profits at other times. Many slaughterers who suffered losses during the first three months of 1943 have undoubtedly recouped those losses during May, June, and July. The Administrator has long hoped that the indirect controls previously imposed—wholesale and retail price ceilings, rationing, and slaughter restrictions—would be sufficient. The sharp fluctuations in live hog prices indicate, however, that although each of the existing indirect controls is partially effective, and hence valuable in itself, they may be insufficient in the aggregate to assure the continuance of hog prices properly related to the wholesale pork price structure. Moreover, excessive fluctuations in hog prices from season to season raise serious production problems for many firms and tend to impede the effective operation necessary for the prosecution of the war. To remove the threat of repeated crises, to permit necessary stability in the operations of the industry, and to assure the continuance of hog prices properly related to wholesale pork ceilings, the Administrator deems it necessary to place a fixed upper limit on the range of fluctuation of live hog prices. This action is also necessary to prevent hog price increases from dislocating grain distribution."

16. Plaintiff was a member of the National Independent Meat Packers Association, an organization of approximately 650 meat packing companies, which on several occasions in 1942 and 1943 protested to the Office of Price Administration against the maximum prices at which the packers were allowed to sell wholesale pork cuts under price regulations then in effect. In the Emergency Price Control Act of 1942 and in regulations issued by the Price Administrator, a procedure was provided for filing protests to regulations issued by the Price Administrator. On July 17, 1942, plaintiff filed a written protest to Maximum Price Regulation No. 148 with the Price Administrator and again on March 18, 1943, plaintiff filed with the Price Administrator a written protest to Revised Maximum Price Regulation No. 148.

17. Orders and accompanying opinions denying the protests filed by plaintiff were entered by the Price Administrator on April 23, 1943 and July 5, 1943. Plaintiff did not attempt to have these decisions of the Price Administrator reviewed by the Emergency Court of Appeals as authorized by the Emergency Price Control Act of 1942, and did not file any complaints in that Court after the orders denying plaintiff's protests were entered.

18. The requisition of plaintiff's property occurred at a time when there was an acute shortage of pork products available for the civilian population. In addition to a greatly increased civilian

demand, large quantities of pork and other meat products were being purchased by Government agencies for war uses. As a result, offerings on the market of pork products, particularly of the better cuts of pork, were considerably below normal, and supplies available for the general trade were far short of the demand. The Food Distribution Administration was having difficulty in obtaining its requirements and on March 13, 1943, the Director of that agency issued an order which required each slaughterer operating under Federal inspection to set aside for war uses 45% of all pork and designated percentages of other meat derived from the slaughter of hogs and other livestock.

19. Plaintiff attempted to replace the property taken by defendant by purchasing pork cuts in the market but was unable to do so. The only means of replacement available to plaintiff was through the purchase and slaughter of live hogs and this was the method which plaintiff customarily followed during 1942 and 1943. The replacement cost of the property requisitioned by defendant at the time and place of the taking was the sum of \$30,293.00. This figure is based on the cost of live hogs prevailing at that time, plus the cost of slaughtering and converting them into pork cuts.

20. At the time plaintiff's products were requisitioned there was a ready market for such products in Philadelphia. The prevailing market prices were the maximum prices established by Revised Maximum Price Regulation No. 148. Prior to and after the date of the requisitioning, plaintiff regularly sold pork cuts and other pork products in this market at the established ceiling prices. Such prices were the only legal prices at which plaintiff could dispose of its products. Throughout the period

17 mentioned, plaintiff continued to buy live hogs at prevailing prices and to sell pork products derived from them at the ceiling prices authorized by regulations of the Office of Price Administration, even when the cost of live hogs was greater than the wholesale prices of the products obtained from them. Plaintiff chose to do this in order to protect its good will and the investment in its business, in order to supply customers who were dependent on it and in order to retain its organization of plant and company employees at a time when the labor situation in Philadelphia was very tense.

21. The ceiling price of the requisitioned property when sold at wholesale in carload quantities at Philadelphia, Pennsylvania, on March 3, 1943, was \$25,112.50.

22. As heretofore stated, the purchase order and requisition issued by defendant called for the delivery of plaintiff's pork cuts in carload quantities, whereas plaintiff customarily sold such prod-

ucts in lots of less than 500 pounds each. Plaintiff's customers, approximately 5,000 in number, are retail meat dealers located in the Philadelphia area, whom plaintiff serves by means of 57 route trucks. The ceiling price of the requisitioned property when sold at wholesale in lots of 500 pounds or less in Philadelphia at the time of the taking was \$26,362.50. The excess of this figure over the amount mentioned in the preceding finding results from the fact that the provisions of Revised Maximum Price Regulation No. 148, which established the market price, authorized a deduction of \$1.00 per cwt. for sales at wholesale in carload quantities. The \$1.00 differential was intended to partially defray the expense incurred for delivery and sale in less than carload quantities.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is entitled to recover \$17,736.75.

It is therefore ordered and adjudged that the plaintiff recover of and from the United States the sum of seventeen thousand seven hundred thirty-six dollars and seventy-five cents (\$17,736.75).

18

Opinion

WHITAKER, Judge, delivered the opinion of the court:

On March 1, 1943, the defendant requisitioned from plaintiff 225,000 pounds of meat and pork products. It offered to pay therefor the ceiling price fixed by the Office of Price Administration, but on plaintiff's refusal to accept this amount, it paid plaintiff one-half of it, as required by law. Plaintiff now sues for the difference between this amount and what it says is just compensation.

Plaintiff says that the best measure of just compensation in this case is what it cost to replace the products taken. The defendant says that the market price is the proper measure and that, since the highest price which plaintiff could have obtained for these goods on the market was the ceiling price fixed by the Office of Price Administration, this is the amount that is just compensation.

We have heretofore held that the market price is not always the measure of just compensation,¹ and we do not think it is in this case.

The defendant does not deny that the ceiling price fixed by the Office of Price Administration was lower than the cost of produc-

¹ Alexander D. Walker, et al v. United States, 108 C. Cls. 553. Cf. Coombs v. United States, 106 C. Cls. 402, decided June 3, 1946. See United States v. General Motors Corp., 323 U. S. 373, 376.

tion, but it, nevertheless, says that since plaintiff would have received no more for these goods had it sold them to its customers than the amount the defendant paid it, less the less-than-carload-lot differential, plaintiff's pecuniary position has been made no worse by the requisition of them and the payment of the ceiling price, and that, therefore, the payment of the ceiling price is the extent of its obligation.

It is true that the cases hold that when property is taken the owner must be put in as good position pecuniarily as he was in before his property was taken. *Seaboard Air Line Ry. Co. et al. v. United States*, 261 U. S. 299; *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, 125; *United States v. Miller*, 317 U. S. 360, 374; *Alexander D. Walker, et al. v. United States*, *supra*. But

defendant goes further than this and says that this is the extent of its obligation. Whether or not this is so in all cases, we do not need to decide. For the purposes of this decision we shall assume that this is the extent of its obligation. But, even so, the payment to plaintiff of the ceiling price did not put it in as good position pecuniarily as it was in before its property was taken. This is so because plaintiff had to replace the articles taken, and it could not do so at the price paid it. Plaintiff felt obliged to furnish its customers a certain amount of products, although at a loss, in order to retain their good will and to provide employment for its employees, and thus hold its organization together; but it kept on hand only enough goods to supply its customers with the minimum they could get along on; hence when defendant took its goods it was necessary for plaintiff to replace them, in order to supply its customers.

To do so, plaintiff undertook first to buy these products on the market, but it was unable to do so at the ceiling price. It was, accordingly, necessary for it to go into the market and purchase live hogs and process them and deliver the products to its customers. Since the price of live hogs had risen from \$13.15 per cwt., the price at the time the OPA price was fixed, to \$15.00 per cwt., it cost plaintiff more to replace the pork products than what the defendant had paid it and more than what it could obtain for them at the ceiling price fixed by the Office of Price Administration. When the Government took them it paid plaintiff less than what it had cost it to acquire them, and then when plaintiff had to replace the products and sell them at the OPA ceiling price, it sustained another loss. As a result of the requisition, therefore, plaintiff has sustained a loss on two transactions instead of one.

Defendant, of course, as a wartime measure, has the right to fix a maximum price at which goods can be sold; but when it takes a citizen's property it is obligated to justly compensate him there-

for. As a general rule, it has not justly compensated him unless it pays him an amount sufficient to take care of the loss it inflicts on him as a result of the taking of his property. *United States v. New River Collieries*, 262 U. S. 341. Or, applying the rule, that the Government is obligated to put the citizen in the same pecuniary position as he was in before his property was taken, to 20 a case where plaintiff must replace the property taken—in such case the defendant must give plaintiff enough money to enable it to buy other property in place of that taken without sustaining a loss.

We have found that the cost of replacing the property taken was \$30,293.00. In order to put plaintiff in the same condition it was in before its property was taken, the defendant will have to pay it the sum of \$30,293.00.

By what we have said we must not be understood to imply that the ceiling price is the measure of just compensation when it is not necessary for the owner to replace the property taken. That case is not before us. See *Walker v. United States*, supra.

Defendant in its brief says that plaintiff's suit is an indirect attack on the Maximum Price Regulations and that such an attack can be made only before the Emergency Court of Appeals. This is clearly incorrect.

These regulations forbade plaintiff to sell its goods at higher than ceiling prices; but plaintiff has not sold its property to the Government; its property has been taken by the Government. In such case plaintiff is clearly entitled to demand the price the Constitution says it is entitled to. There is nothing in the Price Control Act which prevents it from making this demand in this tribunal. Plaintiff neither attacks the validity of the regulations nor does it seek to violate them.

Plaintiff has been paid for the pork products taken the sum of \$12,556.25. The cost of replacing them was \$30,293.00. Plaintiff is entitled to recover a judgment for the difference of \$17,736.75. Judgment for this amount will be entered. It is so ordered.

JONES, Judge; LITTLETON, Judge; and WHALEY, Chief Justice, concur.

MADDEN, Judge, took no part in the decision of this case.

21

Order of Court Relative to Judgment

October 7, 1946

ORDER

On the court's own motion the conclusion of law is amended to read as follows:

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is entitled to recover \$17,736.75. Plaintiff is also entitled to recover as a part of just compensation interest at the rate of 4 per centum per annum of \$12,556.25 from March 3, 1943, to May 22, 1943, and on \$17,736.75 from March 3, 1943, to date of payment.

It is, therefore, ordered and adjudged that the plaintiff recover of and from the United States the sum of seventeen thousand seven hundred thirty-six dollars and seventy-five cents 23 (\$17,736.75), plus interest at 4 per centum from March 3, 1943, to May 22, 1943, on \$12,556.25, and on \$17,736.75 from March 3, 1943, to the date of payment, not as interest but as a part of just compensation.

The concluding paragraph of the opinion is modified accordingly. The findings of fact will stand.

By the Court.

RICHARD S. WHALEY,
Chief Justice.

OCTOBER 7, 1946.

25

Judgment of the Court

October 7, 1946

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is entitled to recover \$17,736.75. Plaintiff is also entitled to recover as a part of just compensation interest at the rate of 4 percentum per annum on \$12,556.25 from March 3, 1943 to May 22, 1943, and on \$17,736.75 from March 3, 1943 to date of payment.

It is therefore ordered and adjudged that the plaintiff recover of and from the United States the sum of seventeen thousand seven hundred thirty-six dollars and seventy-five cents 27 (\$17,736.75), plus interest at 4 per centum from March 3, 1943 to May 22, 1943 on \$12,556.25, and on \$17,736.75 from March 3, 1943 to the date of payment, not as interest but as a part of just compensation.

29 [Clerk's certificate to foregoing transcript omitted in printing.]

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Supreme Court of the United States

16

No. 862, October Term, 1946

Order allowing certiorari

Filed March 3, 1947

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.